

1- EO/DOA

mp 19 FEB 1981

TRANSMITTAL SLIP

19 FEB 1981

OGC Has Reviewed

TO: ADDA

ROOM NO.

BUILDING

REMARKS:

D/OIS received copy of the attached.

Per reference he is having a meeting at 1300 today to consolidate Agency position on revising E.O. 12065 and after that meeting he will respond to the General Counsel's memorandum.

FROM:

Gen. Counsel

ROOM NO.

BUILDING

EXTENSION

FORM NO. 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(47)

TRANSMITTAL SLIP		DATE
TO: ADDA		
ROOM NO.	BUILDING	
REMARKS:		
<p>1- EO/DOA mp 27 FEB 1981</p> <p>2- ADDA H 27 FEB 1981</p>		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241  
1 FEB 55

REPLACES FORM 36-8  
WHICH MAY BE USED.

(4)

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Approved For Release 2003/12/19 : CIA-RDP84B00890R000300020018-6

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OGC 81-03477  
28 April 1981

MEMORANDUM FOR: Director, National Foreign Assessment  
Center  
Deputy Director for Operations  
Deputy Director for Science & Technology  
Deputy Director for Administration  
Comptroller  
Legislative Counsel  
Director of Personnel Policy, Planning,  
and Management  
Director of Public Affairs  
Director, Equal Employment Opportunity  
Director of Security  
Special Assistant to the DCI for  
Compartmentation  
Director of Information Services, DDA

FROM : Daniel B. Silver  
General Counsel

SUBJECT : Revised Draft of E.O. 12065

1. A revised draft of proposed changes to E.O. 12065 is enclosed for your review. This draft incorporates recommended revisions suggested by both components within the Agency, and the other member agencies of the interagency working group examining this order. The enclosed draft includes a section-by-section analysis of the proposed changes, with a statement of each individual proposal, the agency or agencies suggesting the change in parentheses, a discussion of the need for the recommended revision, and amended language where appropriate.

2. The interagency working group will be meeting tentatively this Friday, 1 May 1981, at 2:00 to discuss these proposed changes. The enclosed document is still at the draft stage, so that further comments concerning additional revisions are still welcomed. Any comments concerning the draft should be communicated orally to [redacted] of my office.

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Enclosure

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THE WHITE HOUSE

0001

SECRET  
ATTACHMENTS

WASHINGTON

February 13, 1981

81-3127

MEMORANDUM FOR

THE SECRETARY OF STATE  
THE SECRETARY OF DEFENSE  
THE ATTORNEY GENERAL  
THE DIRECTOR OF CENTRAL INTELLIGENCE  
THE ASSISTANT TO THE PRESIDENT FOR  
NATIONAL SECURITY AFFAIRS  
THE DIRECTOR, FEDERAL BUREAU OF  
INVESTIGATION  
THE DIRECTOR, UNITED STATES SECRET  
SERVICE

SUBJECT: Recommendations For Changes In Regulations  
Concerning Intelligence Activities

I have reviewed your responses (Tabs A-F) to my memorandum of 26 January 1981 on the subject above.

In preparation for our next meeting on this subject, the working group established by the Director of Central Intelligence should analyze these responses and forward a coordinated proposal for consideration by principals. This proposal should be sent to Richard V. Allen, Assistant to the President for National Security Affairs, by Tuesday, 17 February 1981.

In addition to the issues raised in the attached responses, the working group should also consider what changes could be made in Executive Order 12065 to enhance our intelligence-gathering capability.

FOR THE PRESIDENT:

Edwin Meese III

Counsellor to the President

SECRET  
ATTACHMENTS

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Approved For Release 2003/12/19 : CIA-RDP84B00890R000300020018-6

MEMORANDUM FOR: General Counsel

Deputy General Counsel

STAT FROM

:

SUBJECT : Revision of E.O. 12065,  
"National Security Information"

1. The preamble to present E.O. 12065 states that order's purpose to be the balancing of "the public's interest in access to government information with the need to protect certain national security information from disclosure." The tone of the preamble is reflected throughout the order, that is, that in balancing these two interests the public's need to know is generally to be accommodated even if release of the information at issue could cause damage to the national security. The order's primary purpose should be the protection of national security information, which should be emphasized in an amended preamble to the order:

It is essential that certain information in the Government's possession be uniformly protected against unauthorized disclosure. It is also essential that the public be informed concerning the activities of its government. The interests of the United States and its citizens require that certain information which is essential to our

national defense and security be given only limited dissemination. To ensure that such information is adequately safeguarded, this order identifies the information to be so protected, prescribes classification, declassification, and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

2. Section 1-1, 1-3

a) The present Executive Order limits classification by setting out seven specifically enumerated categories of classified information and providing that a document may not be classified unless it falls within one of these categories. §1-103(a)-(g). If a document falls within one of these categories, it may be classified if an original classification authority determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security. Under the old Executive Order 11652, this damage determination was contained in the actual definition of the various classification labels (i.e, "confidential" information was defined as information whose "unauthorized disclosure could reasonably be expected to cause damage to the national security." E.O. 11652, §1(C)). While the old order did not contain categories into which information must be fitted, it did provide specific examples of "top secret" and "secret" information. Id., §1 (A) (B).

The categories provided by the present Executive Order are sufficiently broad (i.e, "intelligence activities, sources

and methods, foreign relations-activities of the United States, scientific-economic matters relating to national security), that they do not present any significant obstacle to classification. By providing specific categories of information, the Order also provides officials with some discernible guidelines in making these classification decisions, and thus renders such decisions less susceptible to challenge as arbitrary and capricious. If these categories are felt to be too restrictive, rather than deleting the entire categorization section, it would be preferable to simply amend the seventh "elastic" category of information. Section 1-301(g) presently permits "other categories of information which are related to national security" to be classified, but requires determinations under this section to be made by the President, his immediate delegates, or agency heads. This category's availability for use should be expanded to permit all original classification authorities to classify information under its provisions. Additionally, Section 1-304, which requires all determinations made under this category to be reported promptly to the Director of the Information Security Oversight Office ("ISOO"), should be deleted. This reporting requirement inhibits the legitimate use of this seventh category by suggesting that such determinations are inherently questionable and subject to review and oversight by a party outside the Agency.

b) Some question has also been raised as to whether the "identifiable" damage standard in Section 1-302 should be deleted. That section states that even if information falls

within one of the above categories, it may not be classified unless its disclosure could "reasonably be expected" to cause "identifiable" damage to the national security. Former E.O. 11652 permitted classification under a looser "cause damage" standard. Again, however, this requirement of "identifiable damage" is not so onerous as to require complete deletion. The section itself does not require absolute certitude in identifying the consequences of disclosure, but states the standard in terms of what "can reasonably be expected" if disclosure is permitted. Requiring officials to articulate with reasonable specificity the likely consequences or injuries that can be expected from disclosure is also desirable in terms of later defending such decisions. It encourages classification officials to focus initially on the harm that disclosure of this information will occasion, and avoids the necessity for post hoc rationalization of classification decisions due to an official's vague and inarticulated feeling that "the information is secret because it is secret." Moreover, the presumption contained in Section 1-303, that disclosure of foreign government and source information is presumed to cause "identifiable" harm, further diminishes any need to totally delete this requirement. To the extent that some relaxing of this identifiable harm standard is needed, rather than deleting section 1-302, a new paragraph (b) could be added which would recognize the "aggregate" or "mosaic" effect in this damage determination process:

(b) its unauthorized disclosure, in combination

with one or more disclosures, reasonably could be expected to cause at least identifiable damage to the national security, even though each disclosure in isolation would not be expected to do so.

c) The present presumption contained in Section 1-303, which provides that "unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security", should be continued. This provision could also be strengthened by incorporating the further protection provided such information by ISOO regulation, 32 C.F.R.

§2002.5(b):

The unofficial publication, in the United States or abroad, of foreign government information contained in United States or foreign documents, or of substantially similar information, does not in or of itself constitute or permit the declassification of such documents.

Although prior unofficial publication may affect determinations as to continuation of classification, there may be valid reasons for continued protection of the information which could preclude its declassification. In particular, the classification status of foreign government information which concerns or derives from intelligence activities, sources or methods shall not be affected by any unofficial publication of identical or similar information.

### 3. Section 1-204

E.O. 11652 provided no limitation on the delegation of classification authority, except that such delegation be in writing. In order to limit the number of persons with classification authority, E.O. 12065 presently provides only the DCI with authority to determine which employees should be given Top Secret classification authority. The DCI's inability to delegate this responsibility to other officials should be corrected given the other demands made of the DCI's time and energies. Section 1-204(a) should be amended to permit officials designated by the DCI to determine which Agency employees should be provided with Top Secret classification authority:

1-204(a) Authority for original classification of information as Top Secret may be delegated... as determined by the President, by agency heads listed in Section 1-201, or by a senior official with Top Secret classification authority who is granted this responsibility in writing by an agency head listed in Section 1-201.

4. Section 1-501, 502

Section 1-501(a) requires that paper copies of all classified documents contain the identity of the original classification authority. This section has required the adoption of complex number designator and derivative classification schemes, which have led to considerable confusion and allegations by both GAO and the courts that the Agency has failed to satisfy these various marking requirements in certain instances. Rather than requiring such original and derivative classification

markings, E.O. 11652 simply provided that the individual at the highest level authorizing classification should be identified. Identification of the highest authority authorizing classification would adequately serve the Order's intent of encouraging responsible and thoughtful classification determinations, while simplifying the multiple classification marking schemes in use at present. Additionally, 1-501 should be amended to provide that the classification warnings presently required on paper documents should be prominently displayed, where practicable, on all types of classified information regardless of its physical form or medium.

5. Section 1-504

Section 1-504 provides that each classified document must clearly indicate which portions are classified or unclassified, and the level of classification of those portions which are classified. The Director of ISOO is authorized to grant exemptions for good cause from this portion marking requirement for specific classes of documents or information.

This section should be amended to permit the DCI to grant portion-marking waivers for CIA contractor-generated documents which are impractical to so mark. Agency heads listed in Section 1-201 should be permitted to grant portion-marking waivers for classes of documents that are a) originated by either the government or a contractor/consultant within either a government or contractor facility pursuant to an agreement between the government and contractor/consultant for services or products; (b) impracticable to portion mark; and (c) unintended

for use as the basis for the classification of other documents. The increased contract costs and man-hours required to portion mark such documents by highly paid scientific and engineering personnel, and the unlikelihood that such material will be used as a basis for further classification makes this waiver provision necessary. The waiver authority of ISOO should be limited to classes of documents other than contractor-generated documents subject to the above agency head waiver provision. Additionally, ISOO determinations with respect to portion marking waivers should be appealable to the National Security Council ("NSC") in the same manner as ISOO declassification decisions are under Section 3-104. At present, ISOO is provided with the final authority on all portion marking waiver requests. Legitimate disputes between two agencies within the intelligence community concerning exemptions from the substantive requirements of E.O. 12065 should be decided by the NSC, which is the appropriate body to consider policies on matters of common interest to agencies with national security functions. 50 U.S.C. §402(b).

6. Section 1-603

This section provides that a product of non-government research or development may not be classified unless the government acquires a proprietary interest in the product. This section is not intended to affect the provisions of the Patent Secrecy Act (§5 U.S.C. §§181-88). The Patent Secrecy Act specifically permits the Patent Office to order that an invention be kept secret and to withhold the grant of a patent if disclosure of an individual's invention is determined by certain

designated defense agencies to be detrimental to the national security. This ability to deny patent applications for national security purposes is provided with regard to inventions in which the government has no proprietary interest. The Act also authorizes the issuance of Secrecy Orders by the Patent Office in such cases, which strictly limit access to and disclosure of information contained in such patent applications. The practical significance in not permitting the government to classify information relating to products in which it has no proprietary interest, but authorizing the issuance of secrecy orders which limit access and disclosure in the same fashion is not readily apparent. More importantly, government efforts to limit dissemination of information that may be vital to technological developments contained in national defense applications has been seriously undermined by this ambiguous provision. If this provision is simply intended to make classification of privately owned documents dependent upon the government's acquisition of a proprietary interest in such document then it should be reworded to reflect this purpose. Preferably, this section should be deleted entirely, since its existence has undercut the protections provided by the Patent Secrecy Act, and has otherwise impaired government efforts to limit sensitive technological information originating in the private sector but impacting significantly on the country's national security.

7. Section 1-606

The present E.O. restricts the use of classification after a document has been requested under the FOIA or the non-

statutory "Mandatory Review" procedure. Only senior agency officials with Top Secret classification authority are authorized to classify documents originated before the effective date of the order upon receiving a FOIA request. Documents originated on or after the effective date of the E.O. 12065, may be classified after the Agency has received a FOIA or mandatory review request, only by the DCI or DDCI. This provision should be amended to permit the DCI to delegate this classification authority for documents originated after the effective date of the order to senior officials below the DDCI level. Given the number of FOIA requests the Agency receives, and the inevitability that errors and oversights will occur in this classification process, officials below the DCI, DDCI level should be authorized to make such decisions in order to relieve the administrative burden imposed on the Agency by this unnecessary restriction.

1-606 No document originated on or after the effective date of this Order may be classified [upon receipt of a FOIA or Mandatory Review] request... unless such classification... is authorized by the agency head or by a senior official granted such authority in writing by the agency head.

8. Section 3-3

Sections 3-301 and 3-302 should be reworded and Section 3-303 (balancing test) deleted altogether, to correct the present bias and overemphasis on declassification and release of national security information. Section 3-301's initial sentence

requiring that declassification be "given an emphasis comparable to that accorded classification" should be deleted. The remainder of this section is not objectionable, since it ties declassification to "national security considerations" and loss of the "information's sensitivity with the passage of time." Section 3-302a presently requires information to be declassified unless it is specifically found to continue to meet the classification requirements of Section 1-3. This section should be amended to reflect just the opposite emphasis:

Information reviewed for declassification pursuant to this Order or the FOIA, may only be declassified if the declassification authority established pursuant to Section 3-1 determines that the information fails to meet the classification requirements prescribed in Section 1-3.

Section 3-303 should be deleted in its entirety. That section directs agencies receiving FOIA or declassification requests to undertake a balancing test in certain cases to determine whether the "need to protect such information may be outweighed by the public interest in disclosure of the information," and in such cases where the public interest is found to be weightier, agencies are directed to release such information under the FOIA or to declassify it. This balancing test has been viewed by certain requesters and courts as imposing a third component to the classification process: (a) information must fit within an enumerated category of classifiable

information; (b) its disclosure must result in some identifiable harm to the national security; and (c) that identifiable harm must not be outweighed by the "public interest" in disclosure.

This balancing provision has come to play an increasing role in FOIA cases and has provided FOIA requesters and courts with a further basis for reviewing substantive Agency determinations concerning classification and harm to the national security. Courts which may otherwise feel uncomfortable in making decisions which may impact on the national security, feel less constrained to examine the "public's interest in" such matters and are encouraged to do so by the ambiguous inclusion of this balancing test in the Order's declassification section. Despite Executive Branch disavowals of any interest to alter the substantive requirements of classification through the provision of this balancing test in Section 3-303, requesters are increasingly asserting a mandatory right to judicial review of Agency classification decisions under this provision.

The Congress, in fashioning the FOIA, specifically recognized that in cases involving these two competing governmental interests - increased public access to government information and protection of information essential to national security - the latter interest will prevail. Implicit in the decision to classify information is a determination that the public interest in disclosure is outweighed by the public interest in safeguarding information necessary for the nation's defense and security. Once information is determined to be classifiable, and identifiable harm can reasonably be expected

from its disclosure, generalized assertions of public interest raised under the FOIA by one person purporting to act for the public's benefit should not subject an otherwise valid classification decision to further challenge by a requester or review by the courts.

9. Section 3-4

Section 3-4 presently limits the classification of most information to six years. It further provides that information requiring protection for a longer period may be classified for up to 20 years. Information constituting permanently valuable records of the Government must be reviewed for systematic declassification at the end of 20 years, but classification may be extended for ten-year periods provided the information is reviewed at the end of each period. Foreign government information may be classified for a 30-year period. Section 3-4 also provides a mandatory review procedure, which requires agencies to conduct a review, upon request to either the National Archives ("NARS") or the originating agency, of requested documents and declassify and release those documents no longer requiring protection.

The present executive order exempts foreign government information from automatic and twenty-year systematic declassification review, but provides no similar provision for information relating to intelligence sources and methods. The imposition of 6 and 20 year systematic declassification reviews for intelligence source and method information, and a 30 year declassification review for foreign government information, fails

to recognize the continuing need for protection of much of this intelligence and foreign government information beyond any artificially imposed time period. Moreover, it requires time-consuming and costly page-by-page review of information which frequently is of no interest to the public and which is never likely to be the subject of a FOIA or mandatory review request. The provisions of E.O. 11652 were much more practicable in recognizing both the administrative burden occasioned by requiring systematic review of all intelligence source and method information, and the public's right to have such a review implemented in cases of particular need. The present declassification section should be revised along the lines of section 5 (B)-(C) of E.O. 11652 to read:

(a) Certain classified information may warrant protection for a period exceeding that provided in the automatic and systematic declassification provisions of sections 1-4 and 3-401. An official with Top Secret classification authority may exempt from the above automatic and 20-year systematic declassification provisions any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed. The use of the exemption authority shall be consistent with national security requirements and shall be restricted to the following categories:

(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence;

(2) Classified information disclosing intelligence activities, sources or methods.

(b) All classified information and material originated either before or after the effective date of this order which is exempted under (B) above from automatic and systematic declassification shall be subject to a classification review by the originating agency at any time after the expiration of ten years from the date of origin provided:

(1) An agency or member of the public requests a review;

(2) The request describes the record with sufficient particularity to enable the agency to identify it; and

(3) The record can be obtained with only a reasonable amount of effort. Information or material which no longer qualifies for exemption under (b) above

shall be declassified. Information or material continuing to qualify under (B) shall be so marked. Review of foreign government information exempted under 3-404 (a)(1) shall be in accordance with the provisions of Section 3-3 and with guidelines developed by agency heads in consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information. Review of intelligence source and method information exempted under 3-404(a)(2) shall be in accordance with the provisions of Section 3-3 and with guidelines developed by the Director of Central Intelligence. Such guidelines will be used by the Archivist of the United States and any agency having custody of intelligence sources or methods information.

The above exemption categories are not meant to be exhaustive, but provide for exemption of categories of information falling into the primary areas of concern: foreign government and intelligence sources and methods information. E.O. 11652 also provided categories of exemption for information relating to cryptography, for material disclosing a "system, plan, installation, project, or specific foreign relations matter" requiring continuing protection, and for information whose

disclosure would place a person's life in immediate jeopardy.

E.O. 11652 required an automatic declassification review of such exempted information to be conducted thirty years from the date of the information's origin. One present suggested revision would subject intelligence source information otherwise exempted from automatic and systematic declassification review to review for declassification after seventy-five years. Whether review is required after the passage of twenty, thirty, or seventy-five years, mandatorily requiring agencies to review information that has not been requested by the public is a time-consuming, administratively costly, and unnecessary burden to impose upon the Agency. Moreover, if foreign government information is required to be reviewed after thirty years, and intelligence source information after seventy-five years, foreign government information intermingled with intelligence source information in the same document would have to be identified and segregated in order to comply with these differing review requirements. Rather than expending Agency resources in this manner, a declassification review should be conducted only after a request is received from a member of the public or another agency. Review procedures would be developed by the DCI, and would apply to all Agency-originated intelligence sources and methods information regardless of the location or agency having actual physical custody of this information. The promulgation of such guidelines by the DCI would require the deletion of the

disclosure would place a person's life in immediate jeopardy.

E.O. 11652 required an automatic declassification review of such exempted information to be conducted thirty years from the date of the information's origin. One present suggested revision would subject intelligence source information otherwise exempted from automatic and systematic declassification review to review for declassification after seventy-five years. Whether review is required after the passage of twenty, thirty, or seventy-five years, mandatorily requiring agencies to review information that has not been requested by the public is a time-consuming, administratively costly, and unnecessary burden to impose upon the Agency. Moreover, if foreign government information is required to be reviewed after thirty years, and intelligence source information after seventy-five years, foreign government information intermingled with intelligence source information in the same document would have to be identified and segregated in order to comply with these differing review requirements. Rather than expending Agency resources in this manner, a declassification review should be conducted only after a request is received from a member of the public or another agency. Review procedures would be developed by the DCI, and would apply to all Agency-originated intelligence sources and methods information regardless of the location or agency having actual physical custody of this information. The promulgation of such guidelines by the DCI would require the deletion of the

duplicative authority provided in Section 3-403 to establish guidelines for the systematic review and declassification of information concerning the identities of clandestine human agents. Unlike the presently provided authority in Section 3-403, the revised provision in 3-404 would not make any DCI developed guidelines subject to approval by ISOO.

10. Section 3-505

Agencies receiving requests for information under either the above mandatory review procedures or the FOIA, may not, under Section 3-505, refuse to confirm or deny the existence or nonexistence of documents unless the fact of their existence or nonexistence would itself be classifiable under the Order. The retention of this limitation on the "Glomar" response is desirable to avoid a growing tendency to use this response indiscriminately to avoid burdensome processing or problems relating not to the existence of documents but to the underlying sensitivity of the information contained in such documents. The Agency's ability to defend such a response is dependent on its judicious use and the degree to which Agency officials can clearly articulate and distinguish between the harm occasioned by acknowledging the existence or nonexistence of documents and the actual injury involved in releasing the information contained in the documents themselves.

11. Section 3-7

A new Section 3-7, dealing with the "Upgrading of

Classified Information" should be added to achieve a better balance between the present Order's emphasis on declassification and the need to adequately safeguard national security information. This section could be modeled on section 4(g) of former E.O. 10501, which provided:

3-7. Upgrading. If the recipient of unclassified material believes that it should be classified, or if the recipient of classified material believes that its classification is not sufficiently protective, it shall be safeguarded in accordance with the classification deemed appropriate and a request made to the originator or other authorized officials, who may classify the material or upgrade the classification when such upgrading is appropriate.

12. Section 4-1

Section 4-101 presently provides that a person shall not be provided access to classified information unless that person is determined to be trustworthy and unless access is necessary for the performance of official duties. This section needs to be amplified to provide that:

A person is eligible for access to classified information only after a favorable determination of trustworthiness has been reached by agency heads or designated senior officials based upon appropriate investigations in accordance with applicable standards

and criteria. Each agency shall make provision for administratively withdrawing a security clearance of any person who no longer requires access to classified information in connection with the performance of official duties, or when a person no longer requires access to a particular security classification category, the security clearance shall be adjusted to the classification category still required for the performance of official duties.

13. Section 4-2

The present EO provides the DCI with the sole authority to create and continue special access programs and compartmentation controls with respect to matters pertaining to intelligence sources and methods. The authority provided the DCI in this section should be retained, and indeed expanded in order to promote uniformity of standards within constraints set by cost and security needs. This section needs to be expanded to provide that the DCI shall establish, to the greatest extent possible, with due regard for cost and special security needs, uniform security standards to govern access to, distribution of, and protection of intelligence sources and methods.

14. Section 4-3

The present exemption provided historical researchers and former Presidential appointees from the requirement of 4-101, that access to classified information be granted only for the

performance of official duties, should be continued. Access is presently provided only after a written determination that access is consistent with the interests of national security. If this requirement does not sufficiently safeguard such information, further provisions could be added conditioning access on: (a) the researcher's agreement to safeguard the information in a manner consistent with the Order; and (b) the researcher's authorization of a review of his notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

15. Section 4-4

Section 4-404 should be amended to delete the present inventorying and reproduction control requirements imposed on documents covered by special access programs. The cost of implementing such inventorying controls for SCI information would be prohibitive and would produce no measurable improvement in security. Instead, a new section 4-405 should be added (present 4-405 should be renumbered 4-406), which would permit development or continuation of present SCI procedures relating to inventorying and further dissemination of such materials:

"4-405. To accommodate sophisticated intelligence collection, processing and dissemination technology, the DCI in consultation with the managers of approved special access intelligence programs shall prescribe procedures governing the reproduction, inventorying,

and control of SCI materials.

16. Section 5-4

Section 5-404,, which delineates an agency's general responsibilities in implementing the Order, should be revised to reflect a more appropriate balance between the declassification and safeguarding of information. Section 5-404 (g), which provides for the systematic review and elimination of unnecessary agency safeguard procedures, should be deleted, and a new subsection (g) should be added to provide:

To promote the basic purposes of this order, agency heads shall designate experienced persons to maintain active training and orientation programs for employees concerned with classified information to impress upon each such employee his individual responsibility for exercising appropriate care in safeguarding information in compliance with the provisions of this Order. Such persons shall be authorized on behalf of agency heads to establish adequate and active inspection programs to the end that the provisions of this order are administered effectively.

17. Section 5-5

Sections 5-502 and 5-503 provide that any knowing or negligent unauthorized disclosure of classified information may subject an individual to appropriate administrative and criminal

sanctions. The varying degree of severity of the various administrative sanctions provided makes the imposition of such sanctions appropriate for negligent as well as deliberate unauthorized disclosure of classified information. Unauthorized disclosure for purposes of this section should be defined as either a communication or physical transfer of information or material to an unauthorized person. Additionally, the order of section 5-502(a) and (b) should be inverted, to emphasis the greater concern placed on unauthorized disclosure as opposed to wrongful classification of national security information. Section 5-5 presently provides for prompt reporting of possible violations of Federal criminal law (5-505) to the Attorney General and provides for the imposition of criminal sanctions for such violations. The provision of criminal sanctions and reporting procedures for the unauthorized disclosure of classified information certainly provides the means for effectively enforcing the Order. Unfortunately, DOJ has been unwilling to vigorously investigate and prosecute cases involving the unauthorized disclosure of classified information. To

encourage greater efforts by DOJ in this regard, the following sentence should be added to the end of Section 5-505:

The Attorney General shall vigorously investigate any report or evidence disclosing the possible unauthorized disclosure of classified information, and shall take appropriate prosecutorial action if a violation of the Federal criminal laws has been committed.



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